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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1286

JAMES H. MATTHEWS & CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1–18) is reported at 354 F. 2d 432. The Board's decision and order (Pet. App. 19–67) are reported at 149 N.L.R.B. 161.

JURISDICTION

The opinion of the court of appeals was issued on December 29, 1965 (Pet. App. 1). A petition for rehearing was denied on February 8, 1966, and the decree entered on February 9, 1966 (Pet. 2). The petition for a writ of certiorari was filed on May 6, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The National Labor Relations Board found that petitioner (the employer) wrongfully refused to bargain collectively with the union. The question presented is whether two of the Board's underlying findings—that the union had valid authorization cards from a majority of the employees in the bargaining unit, and that petitioner in fact had no good faith doubt of the union's majority status—were supported by substantial evidence.

STATUTE INVOLVED

The National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), provides:

> SEC. 8(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of * * * [their rights as to organization, collective bargaining, etc.; or]
>
> * * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [of the Act] * * *.
>
> * * * * * *
>
> SEC. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *.

STATEMENT

A. THE FACTS

Petitioner is a corporation engaged in various kinds of manufacturing in 17 plants throughout the United States and Canada (Pet. App. 24; R. 126, 188).[1] Its Searcy, Arkansas plant specializes in the manufacture of bronze memorial tablets and plaques (Pet. App. 24; R. 126). The plant has two general divisions, the foundry and the factory (Pet. App. 32; R. 177). About 35 employees work in the foundry and 37 in the factory, which is subdivided into four departments each headed by a department head or "leadman" (Pet. App. 33; R. 153–154).

In early January 1964, the International Association of Machinists, AFL–CIO, began an organizing campaign among the employees at the Searcy plant. On January 6, a meeting was held between union representatives and some 25 employees, and union authorization cards were distributed to the employees (Pet. App. 27; R. 69–70). The union's representative read the terms of the authorization card to the assembled employees (Pet. App. 27–28; R. 71, 232–233), and explained to them that, if a majority signed the cards, the union could "go to the Company and demand recognition and demand bargaining by asking the Company" or "you could file a petition for an election in the plant with 30 percent of the cards being signed" (Pet. App. 28; R. 71, 233). At the conclusion of

[1] "R." refers to the portions of the record printed as a joint appendix in the court below.

the meeting, most of the employees present signed cards (Pet. App. 29; R. 71).[2]

The day after the meeting, T. J. Underwood, the leading union advocate among the employees, was approached by his department head, Larry Harmon. Harmon asked how the meeting went, and warned, "[y]ou had better drop it [the union] or it will mess you up in your department" (Pet. App. 43–44; R. 74). Later the same day, Harmon told Underwood that, if he did not "drop" the union, he would get no more promotions or raises (Pet. App. 50; R. 75). On January 9, Harmon again talked to Underwood. He told him, "T. J., if a man in my department goes union, I'll make it awfully rough on him" (Pet. App. 50; R. 75); "you will lose all of your insurance, profit-sharing and all of your Company benefits" (Pet. App. 50; R. 76).[3] At a second union meeting, held on Jan-

[2] The form of the blank card reads (Pet. App. 28):

Authorization for Representative

I, the undersigned employee of * * * hereby authorize the International Association of Machinists or any District or Local Lodge thereof to represent me for purposes of Collective Bargaining and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other conditions of employment.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

(Witness) (Signature of Employee)

Date

[3] About this time, other employees were questioned about the union by the plant superintendent (Pet. App. 43–46; R. 94–95, 96, 101–102).

uary 10 (Pet. App. 28, 54; R. 119), the plant superintendent, his assistant, and the office manager were in a room next to where the meeting was being held (Pet. App. 28; R. 103, 119), and, as the employees walked out of the meeting, the office manager checked their names off a list of employees he had attached to a clip board (Pet. App. 54–58; R. 72–73, 103–104, 108, 119, 237–239).

By January 11, 38 of petitioner's 72 employees had signed authorization cards (Pet. App. 29; R. 253–274), and on that day the union notified petitioner that it had been requested by "your employees * * * to represent them in all matters pertaining to employment covering wages, hours of service and all other conditions of employment." The letter added: "We request that you meet with us to discuss, negotiate, and enter into agreement with us [concerning] the terms and conditions of employment for all production and maintenance employees. * * * We suggest that you meet with us * * * for the purpose of establishing our showing of representation of your employees. We prefer the selection of a neutral party to be present and check our representation request against your payroll." (Pet. App. 31; R. 248–249). On January 14, the office manager of the Searcy plant replied by letter that the company would bargain with the union only if it was certified pursuant to a Board election. The company expressed no doubt at this time of the union's majority status (Pet. App. 31; R. 250).

On January 16, Roy Randles, general superintendent of the company's Bronze Division, who had been notified of the union's bargaining request, arrived in

Searcy. During the next few days, Randles talked to most of the employees about the union activity. (Pet. App. 46–48; R. 129, 131.) He told one, "I've been planning on sending a T-lug machine down here, but if we get the union in here, there isn't any need in sending it down here, because if you guys go on strike, I wouldn't have any place to make my T-lugs and furnish the other plants." Randles twice asked the employee to reconsider his decision "about the union," and stalked off in silence when he was told, "I've already got my mind made up." (Pet. App. 51, 45–46; R. 96–97.) Randles told another employee, "I hear there is a little trouble going on here," and "I don't know if I can talk to you or not. You might sue my pants off. If I could just find out or get somebody to talk to me and find out what kind of trouble is going on, I could get to the bottom of this, but everybody seems afraid to talk to me. * * * Even if I had to get them in the car and take them 40 or 50 miles" (Pet. App. 46; R. 77–78). Randles concluded by saying that he had intended to move a vase machine to the Searcy plant, but that, since "all of this trouble came up," he had changed his mind and did not think he would (Pet. App. 51; R. 78).

At about the same time, Department Head Harmon told an employee, "If we get a union in here, we won't get this vase department put in our plant" (Pet. App. 44; R. 98). And, in early February, Plant Superintendent Morton visited an employee at his work station and showed him a company insurance check made out to him. Morton said, "This is good insurance, isn't it?" The employee agreed, and Morton con-

tinued: "Do you think the union can get you this kind of insurance?" Morton then put his hand on the employee's union button, flipped it, and said, "[F]ooling with the union is going to cause you to lose that insurance." (Pet. App. 52; R. 223.)

B. THE DECISIONS BELOW

The Board found that petitioner—by coercive interrogation, threats of economic reprisal, surveillance, and other acts—had restrained its employees in the exercise of their rights to self-organization, thus violating Section 8(a)(1) of the National Labor Relations Act (Pet. App. 20, 54, 58–59, 65). The Board further found that the union had had valid authorization cards from a clear majority of the employees in the bargaining unit[4] when, on January 11, 1964, it requested recognition, and that the company had not had a good faith doubt of the union's majority status in declining that request. Accordingly, the Board concluded, the company had violated Section 8(a)(5) of the Act as well, by refusing to bargain with the union. (Pet. App. 20, 59–63, 65.) The Board ordered petitioner to cease and desist from the unfair labor practices found, and to bargain, upon request, with the union (Pet. App. 21–22, 66–67).

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[4] The Board first determined that the four department heads or leadmen were supervisors within the meaning of Section 2(11) of the Act (29 U.S.C. 152(11)), and so concluded that the bargaining unit consisted of 68 employees (Pet. App. 42–43, 59). After sustaining the company's objection to one card, the Board found that, on Jauary 11, the Union had valid authorization cards from 37 of the employees in the unit (Pet. App. 20, 59–60), a majority.

On judicial review of the Board's decision and order, the Court of Appeals for the Eighth Circuit held that the Board's findings were supported by substantial evidence, and enforced the Board's order in full (Pet. App. 1–18).

ARGUMENT

The decision of the court of appeals is clearly correct, and there is no conflict with the decision of another circuit, or any other basis for review by this Court. At issue is the validity of two subsidiary findings of the Board relating to petitioner's refusal to bargain with a duly selected representative of its employees: whether the Board properly rejected petitioner's challenge to three of the authorization cards, and whether the Board could find, as it did, that petitioner's refusal to bargain had not been motivated by any good-faith doubt of the union's majority status.

1. The court below applied well-settled principles in rejecting petitioner's challenge to three of the authorization cards. Each card (p. 4, n. 2, *supra*) clearly and unambiguously recited that by signing it an employee was thereby authorizing the union to represent him for purposes of collective bargaining; and there was no evidence that in obtaining employees' signatures the union or its agents made any misrepresentations concerning the purpose of the cards (Pet. App. 7–12). In such circumstances, it has uniformly been held that "an employee's thoughts (or afterthoughts) as to why he signed a union card, and what he thought that card meant, cannot negative the overt action of having signed a card designating a union as bargaining agent." *Joy Silk Mills, Inc.* v. *National Labor*

Relations Board, 185 F. 2d 732, 743 (C.A.D.C.), certiorari denied, 341 U.S. 914.[5]

2. An employer, of course, may not refuse to bargain with a union representing a majority of the employees of a proper bargaining unit unless he, in good faith, doubts that the union has majority status (Pet. App. 12). And obviously determination of good faith is a factual matter dependent upon the particular circumstances of each case. In the present case the Board (Pet. App. 31, 59–61), sustained by the court of appeals (Pet. App. 13–14), found as a fact that the employer had no such good faith doubt.[6] The employer resorted to coercive tactics forbidden by Section 8(a)(1) to defeat the union's organizational cam-

[5] See *Colson Corp.* v. *National Labor Relations Board*, 347 F. 2d 128, 135 (C.A. 8), certiorari denied, 382 U.S. 904; *National Labor Relations Board* v. *Geigy Co.*, 211 F. 2d 553, 556 (C.A. 9), certiorari denied, 348 U.S. 821; *National Labor Relations Board* v. *Security Plating Co.*, 356 F. 2d 725, 726–727 (C.A. 9); *National Labor Relations Board* v. *Gotham Shoe Mfg. Co.* (C.A. 2), January 14, 1966, 61 LRRM 2177; *National Labor Relations Board* v. *Cumberland Shoe Corp.*, 351 F. 2d 917, 920 (C.A. 6); *National Labor Relations Board* v. *Winn-Dixie Stores*, 341 F. 2d 750 (C.A. 6), certiorari denied, 382 U.S. 830; *International Union of Electrical, R. & M. Wkrs.* v. *National Labor Relations Board*, 352 F. 2d 361 (C.A.D.C.), certiorari denied *sub nom. S. N. C. Mfg. Co.* v. *National Labor Relations Board*, 382 U.S. 902. *National Labor Relations Board* v. *Great Atlantic & Pacific Tea Co.*, 346 F. 2d 936, 941–942 (C.A. 5), is not to the contrary. The court there was not concerned with what kind of evidence was required to impeach the validity of an authorization card. It merely held that, in the circumstances of that case, the employer's belief that the cards had been obtained through undue influence was a relevant factor in concluding that he had a good faith doubt as to the union's majority status.

[6] Petitioner's contention that it had a good faith doubt as to the propriety of the unit (Pet. 5–6) is contrary to these findings.

paign[7]—a course of conduct difficult to reconcile with good faith. In addition, as the court of appeals stressed (Pet. App. 13), the employer's bad faith was shown by his refusal to respond to the union's letter (p. 5, *supra*) inviting independent verification of its majority status. The cases cited by petitioner show no more than that, where, unlike here, the circumstances do not support an inference of bad faith, the employer may refuse to bargain.[8] There is thus no conflict.

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[7] Petitioner does not contest in this Court the finding that it violated Section 8(a)(1).

[8] In *Phelps-Dodge Copper Products Corp.* v. *National Labor Relations Board*, 354 F. 2d 591 (C.A. 7), there was no showing of coercive tactics forbidden by Section 8(a)(1). In *Reilly Tar & Chemical Corp.* v. *National Labor Relations Board*, 352 F. 2d 913 (C.A. 7), there was only one instance of unlawful interrogation and it was viewed by the court as not "very strong," since most of "the statements relied on by the Board were made in reply to questions from the employees" (352 F. 2d at 915). In *National Labor Relations Board* v. *Flomatic Corp.*, 347 F. 2d 74 (C.A. 2) (as the court explained in *Irving Air Chute Co.* v. *National Labor Relations Board*, 350 F. 2d 176, 182 (C.A. 2)), no Section 8(a)(5) (refusal to bargain) violation was found at all, and the Section 8(a)(1) violation was not "flagrant"; hence the court concluded that the Board's order to bargain was not a proper remedy.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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